

ENVIRONMENTAL INDEMNITY

(PARCEL A)

This ENVIRONMENTAL INDEMNITY ("Indemnity") is entered into this _____ day of _____, 1991, by McDonnell Douglas Corporation a Maryland corporation (the "Indemnitor"), to and for the benefit Mission Comstock Partners, a California general partnership, a California corporation ("Indemnitee"), and is executed pursuant to the Loan Agreement dated as of the date of this Indemnity between the Indemnitee and the Indemnitor (such Loan Agreement, as it may from time to time be supplemented, modified and amended, being referred to in this Indemnity as the "Loan Agreement"). The Loan Agreement provides among other things, for rules of construction which apply to this Indemnity. *Refer to Purchase Agent instead?*

All capitalized terms herein shall have the same meaning as in the Loan Agreement unless otherwise defined.

WITNESSETH:

(the "Purchase Agreement")

A. Indemnitee and Indemnitor are concurrently herewith entering into that certain Real Property Purchase Agreement and Escrow Instructions whereby Indemnitee intends to purchase from Indemnitor all of that certain property described on Exhibit "A" hereto ("Property"). In anticipation of the consummation of such purchase, Indemnitor has requested that Indemnitee loan to Indemnitor the sum of \$28,000,000.00 (the "Loan"). *refer to Parcel A*

B. Subject to the terms and conditions set forth in the Loan Agreement, the Indemnitee has agreed to make the Loan to the Indemnitor. The Loan is evidenced by a Promissory Note Secured by Deed of Trust ("Note") and is secured by, among other things, a Deed of Trust ("Deed of Trust") covering the improvements constructed on the Property, the Property and the improvements located thereon being hereinafter referred to as the "Project". *Define Loan Agent here*

C. It is a condition of Indemnitee's making the Loan *and purchasing the Property* that this Indemnity be executed and delivered by the Indemnitor.

NOW, THEREFORE, in consideration of the foregoing and of the Indemnitee making the Loan, and other valuable consideration, the receipt of which is hereby acknowledged, Indemnitor agrees as follows:

1. Definitions. As used in this Indemnity, the following terms shall have the following meanings:

a. "Acquisition Date" means the date on which the Indemnitor or any affiliate of the Indemnitor first acquires any interest in or obtains possession of, the Project.

b. "CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended from time to time (42 U.S.C. Sections 9601 et seq.).

c. "Code" means the California Health and Safety Code, as amended from time to time.

d. "Environmental Activity" means any ~~actual, proposed~~ or threatened storage, existence, release, generation, abatement, removal, disposal, handling or transportation of any Hazardous Substance from, under, into or on the Project.

e. "Environmental Requirements" means all present and future laws, (including CERCLA and the applicable provisions of the Code and regulations promulgated thereunder), orders, judgments, decrees, agreements, authorizations, consents, licenses, permits, and other governmental restrictions and requirements relating to ~~the environment or to any Hazardous Substance or environmental~~ activity.

f. "Hazardous Substance" means, at any time, (a) any "hazardous substance" as defined in Section 101(4) of CERCLA (42 U.S.C. Section 9601(14)) or Sections 25281(d) or 25316 of the Code at such time; (b) any "hazardous waste," "infectious waste" or "hazardous material" as defined in Sections 25117, 25117.5 or 25501(j) of the Code at such time; and (c) any additional substances or materials which at such time are classified or considered to be hazardous or toxic under the Laws of the California or any other applicable Laws relating to the Real Property.

g. "Termination Date" means the earlier of (a) the time of foreclosure of the Deed of Trust, (b) the time of acceptance by the Indemnitee of a deed in lieu of foreclosure of the Deed of Trust, and (c) the time of full reconveyance of the Deed of Trust.

2. Indemnification. The Indemnitor shall indemnify, defend and save and hold harmless each Indemnitee from and against, and shall pay on demand, any and all losses, liabilities, damages, costs, expenses and charges, including the reasonable fees, charges and disbursements of legal counsel, suffered or incurred by any Indemnitee, as a result of (a) the occurrence prior to the Termination Date of any Environmental Activity or any failure of the Indemnitor or any other Person to comply with all applicable Environmental Requirements relating to the Project or the use of the Project, (b) the occurrence on or after the Termination Date, ~~of any Environmental Activity which has resulted directly or indirectly from any Environmental Activity occurring prior to the Termination Date,~~ (c) any failure of any representation of the Indemnitor as set forth in Paragraph 3 below to be correct in all

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caused by
act or omission of Indemnitor or its agents or employees resulting in the occurrence of

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(d) acquisition of the Property by Indemnitee or another party pursuant to the Purchase Agreement, as it may be amended

material

respects as of the date of this Indemnity, (d) any failure of the Indemnitor to perform any covenant set forth in Paragraph 4 below, or (e) any claim, demand or cause of action or any investigation, inquiry, order, hearing, action or other proceeding by or before any governmental agency, whether meritorious or not, which directly or indirectly relates to, arises from or is based on the occurrence or allegation of any of the matters described in clauses (a) through (d) of this Paragraph 2.

3. Representations of the Indemnitor. The Indemnitor represents and warrants to the Indemnitee:

Except as otherwise disclosed in Exhibit "A",

to the knowledge of Indemnitor

a. ✓ The Indemnitor or any affiliate of Indemnitor has, at all times from and after such acquisition date, complied in all material respects with all applicable Environmental Requirements relating to the Project and the use of the Project, and no Environmental Activity has occurred from and after such Acquisition Date in violation of any applicable Environmental Requirements;

b. ✓ To the ~~best~~ knowledge of the Indemnitor, no Environmental Activity has occurred prior to such Acquisition Date in violation of any applicable Environmental Requirements;

c. ~~The use of the Project for its intended purpose will not result in any Environmental Activity in violation of any applicable Environmental Requirements;~~

d. Except as otherwise disclosed in Exhibit "A", ✓ the Indemnitor has not otherwise engaged and does not intend to engage in any Environmental Activity in relation to the Project; and

e. To the ~~best~~ knowledge of the Indemnitor, and except as otherwise disclosed in Exhibit "A" (i) no other Environmental Activity has occurred at any time in relation to the Project, (ii) no portion of the Project is located within 2,000 feet of a significant disposal of "hazardous waste" within the meaning of Section 25221 of the Code, ✓ (iii) no notice, order, directive, or other complaint of communication has been made or issued by any governmental agency or other person alleging the occurrence of any Environmental Activity in violation of any Environmental Requirements or any loss as a result of any Environmental Activity, and no investigations, inquiries, orders, hearings, actions or other proceedings by or before any governmental agency are pending or threatened in connection with any Environmental Activity or alleged Environmental Activity, and (iv) ~~the Indemnitor has no liability, absolute or contingent in connection with any Environmental Activities.~~

4. Covenants of the Indemnitor. Unless the Indemnitee otherwise consents in writing, the Indemnitor shall at all times from and after the date of this Indemnity until the Termination

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For the purposes of this Agreement, "the knowledge of Indemnitor" means the actual personal knowledge of Robert R Young, Thomas J. Motherway, Merle G. Ritchey, Daniel Summers, or other current agent or employee of Indemnitor or its affiliates as to which a fact in question is open to discovery and who has the employment duty to be informed of such fact.

Date, at its sole expense:

a. comply in all material respects with all applicable Environmental Requirements relating to the Project and the use of the Project, and not engage in or otherwise permit the occurrence of any Environmental Activity in violation of any applicable Environmental Requirements or which is not customary and incidental to the intended use of the Project, provided that nothing contained in this Paragraph 3(a) shall prevent the Indemnitor from contesting, in good faith, and by appropriate proceeding any such Environmental Requirements or the interpretation or application of such Environmental Requirements; and

b. Deliver to the Indemnitee, promptly following the occurrence of any such event, notice of the discovery by the Indemnitor of any event the occurrence of which would render any representation contained in Paragraph 3 of this Indemnity, incorrect in any respect if made at the time of such discovery.

5. Unsecured. This Indemnity is not secured by the Deed of Trust or the Project and the obligations of the Indemnitor under this Indemnity shall survive the foreclosure under the Deed of Trust and satisfaction of the Loan, and shall be independent of the obligations of the Indemnitor to the Indemnitee in connection with the Loan. The rights of Indemnitee under this Indemnity shall be in addition to any other rights and remedies of Indemnitee under any guaranty or loan document or at law.

or otherwise

6. Survival. If Indemnitee takes title ^{ur} to the Project through foreclosure or deed in lieu of foreclose of the Deed of Trust, this Indemnity shall not apply to any loss or costs incurred by Indemnitee as a direct result of affirmative actions of Indemnitee as owner and operator of the Project after Indemnitee has acquired title to the Project, which actions are the ~~sole and direct cause of damage resulting from the introduction and initial release of a Hazardous Substance at the Project~~; provided, however, this Indemnity shall otherwise remain in full force and effect, including, without limitation, with respect to Hazardous Substances which are discovered or released at the Project by Indemnitee after the date Indemnitee acquires title to the Project, but which were not actually introduced at the Project by Indemnitee, and with respect to the continuing migration or release of any Hazardous Substance previously introduced at the Project. Environmental Activity

to the extent that such

already covered by #2

7. Cancellation. Indemnitee agrees to cancel this Indemnity and return it to Indemnitor, provided that the Loan is paid in full in cash, prior to the occurrence of any of one of the following:

need exception for acquisition of Property by Indemnitee

a. An Event of Default under the Loan Agreement or any related loan document,

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b. Foreclosure of the Deed of Trust or acceptance of a deed in lieu of foreclosure of the Deed of Trust,

c. A claim made by Indemnitee under this Indemnity, or

d. Any change in applicable Environmental Laws or any interpretation thereof, which in Indemnitee's judgment could result in Indemnitee being responsible for causing the Project to be in compliance with Environmental Laws if any Hazardous Substances are or become present at the Project. *unclear*

Cancellation of this Indemnity shall not affect or impair any rights or remedies or claims Indemnitee may have at law or in equity with respect to Indemnitor.

8. Interest. Any amount claimed hereunder by Indemnitee, not paid by Indemnitor within thirty (30) days after written demand from Indemnitee with an explanation of the amounts claimed, shall bear interest at the then current maximum rate permitted by law.

lesser of twelve percent (12%) per annum or the
9. Successors and Assigns. This Indemnity shall inure to the benefit of Indemnitee's successors and assigns, and shall be binding upon Indemnitor's heirs, successors, and assigns.

10. Laws. This Indemnity shall be governed and construed in accordance with the laws of the State of California.

11. Joint and Several. If this Indemnity is executed by more than one person or entity, the liability of the undersigned hereunder shall be joint and several.

12. Attorneys' Fees. If any party hereto commences litigation for the interpretation, enforcement, termination, cancellation or rescission of this Indemnity, or for damages for the breach hereof, the prevailing party in such action shall be entitled to its reasonable attorneys' fees and court and other costs incurred, to be paid by the losing party as fixed by the court or in a separate action brought for that purpose.

13. Counterparts. This Indemnity may be executed in two or more counterparts, each of which shall constitute an original, but all of which, when taken together, shall constitute but one agreement.

IN WITNESS WHEREOF, this Indemnity is executed as of the day
and year above written.

INDEMNITOR:

Corporation
McDonnell Douglas,
a Maryland corporation

By: _____

Its: _____

Address: _____

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